

SC Guidance
Variance Request Review Process Under 10 CFR 851
November 30, 2006

This document establishes the Office of Science's process for handling variance requests. A contractor must submit a variance request if it believes that the requirements of 10 CFR 851 cannot be met at a DOE site; that it has implemented a means by which to comply with 10 CFR 851 other than that explicitly stated in a standard or elsewhere, or that additional time is required. Variance requests are submitted through the Office of Science (SC) to the Office of Health, Safety and Security (HS), then to the Under Secretary for Science for approval.

A variance request is not needed if the deviation from the requirement of a code or standard has no direct or immediate relationship to safety or health (i.e., de minimis noncompliance) or an equivalency is allowed by the code or standard through approval by the Authority Having Jurisdiction (AHJ). Those deviations meeting the de minimis noncompliance criteria should be handled by the contractor's de minimis noncompliance process as delineated in their Worker Safety and Health Program. Deviations that meet the criteria for an equivalency should be handled through the AHJ approval process.

- Step 1. Initial Submission of the Variance Request. The variance request is submitted to the appropriate Field/Site Office Manager.
- Step 2. Field/Site Office Initial Processing of the Variance Request
- A. Field/Site Office reviews the variance request for correct content, using the criteria in 10 CFR 851.31(c):
1. Name and address of the contractor;
 2. Address of the DOE site involved;
 3. Specification of the standard, or portion thereof, from which a variance is being sought;
 4. Description of the steps that the contractor has taken to inform the affected workers of the variance request. This must include giving a copy of the variance request to the workers' authorized representative and posting a statement in a place where worker notices are normally located, summarizing the variance request and specifying where a copy may be examined;
 5. Description of how affected workers have been informed of their right to petition the Chief Health, Safety, and Security Officer (HS-1) or his designee for a conference regarding the variance request;

Attachment B

6. Any requests for a conference with the Chief Health, Safety, and Security Officer or his designee;
7. The type of variance being requested, i.e. “permanent,” “temporary,” or “national defense”; and
8. If the request is for a “temporary” variance, the following items in addition to items 1 through 7 above must also be included:
 - a. Verification that it has been submitted at least 30 days in advance of the effective date of the applicable standard in 10 CFR 851
 - b. Statement explaining why the contractor is unable to comply with the standard or portion thereof
 - c. Detailed statement of the factual basis for the noncompliance and representations of the qualified persons that support the statement
 - d. Statement of the steps that have been taken, or are planned to be taken, to protect workers against the hazard that exists due to non-compliance with the standard or portion thereof, with specific dates
 - e. Statement of the steps that have been taken, or are planned to be taken, to comply with the standard or portion thereof, with specific dates
 - f. Statement of facts to show that
 1. Compliance is not possible due to the unavailability of professional or technical personnel; materials and equipment; or because necessary construction or alteration of facilities cannot be completed by the effective date of the standard
 2. All available steps are being taken to safeguard workers against the hazard presented due to noncompliance with the standard
 3. An effective program exists to come into compliance with the standard as quickly as practicable
9. If the request is for a “permanent” variance, the following items in addition to items 1 through 7 above must also be included:
 - a. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the contractor to compensate for the non-compliance with the applicable standard, and
 - b. A statement showing how these conditions, practices, means, methods, operations, or processes would provide workers a place of employment which is as free from hazard as if the standard had been complied with

Attachment B

10. If the request is for a “national defense” variance, the following items in addition to items 1 through 7 above must also be included:
 - a. A statement showing that the variance sought is necessary to avoid serious impairment of national defense,
 - b. A statement showing how the conditions, practices, means, methods, operations, or processes would provide workers a safe and healthful place of employment in a manner that, to the extent practical taking into account the national defense mission, is consistent with the standard from which the variance is being sought, and
 - c. Acknowledgement that a National Defense Variance may be only granted for a period of six months, unless there is a showing that a longer period is essential to carrying out a national defense mission
- B. If the variance request content is incomplete, the variance request is returned to the contractor for rework and re-submittal.
- C. If the variance content is acceptable, the Field/Site Office determines which DOE program funds the facility or program for which the variance is being requested.
 1. If the affected facility or program is significantly independent of SC work at a site, the variance request for that facility or program is then forwarded to the DOE Cognizant Secretarial Officer whose program is the primary independent funding source of the facility or program for which the variance is being requested.
 2. The SC COO is also notified that the variance request has been forwarded to another program for action.
 3. If the variance request is applicable to SC work, then this SC process continues.

Step 3. Technical review of the Variance Request

If the variance request has the correct content and applies to SC work, the Field/Site Office coordinates with the SC Office of Laboratory Policy and Infrastructure, SC-31, to establish an Integrated Review Team (IRT) consisting of Subject Matter Experts (SME's) from SC Headquarters; the SC Integrated Support Center; and the Field/Site Office. The IRT reviews the variance request in accordance with the criteria specified in 10 CFR 851.32:

- A. Is consistent with section 3173 of the Bob Stump National Defense Authorization Act available on <http://thomas.loc.gov/>
- B. Does not present an undue risk to worker safety or health;
- C. Is warranted under the circumstances; and

Attachment B

- D. Meets all of the requirements for a variance of its type, as outlined in the Rule and in Step 2 of this review process

The IRT then makes a recommendation for the Field/Site Office Manager.

Step 4. Field/Site Office Manager Action on Variance Request

The Field/Site Office Manager considers the recommendation from the IRT, and either forwards the variance request through the SC Chief Operating Officer to the Director, Office of Science (SC-1), with a recommendation for concurrence, or returns it to the Contractor, providing the grounds for its denial.

If the variance request is denied at the Field/Site Office level, the contractor may, within ten working days following the denial, request that the Field/Site Office Manager forward the variance request to SC -1 for appeal, including additional information as desired to support the appeal.

Step 5. CSO Action on Variance Request or Contractor Appeal of Field/Site Office Manager Denial of a Variance Request

The Director, Office of Science, will consider a variance request forwarded by the Manager of a Field/Site Office for approval, or a contractor's appeal of a Field/Site Office denial of a variance request and either recommend that the request be forwarded to the Chief Health, Safety, and Security Officer (HS-1) for further consideration or deny the variance request or appeal and return the variance request to the Contractor, stating the reason for denial.

Step 6. HS Review of Variance Request

The Chief Health, Safety, and Security Officer (HS-1) considers the variance request, and may request additional information as appropriate.

Step 7. HS Action on a Variance Request.

The Chief Health, Safety, and Security Officer (HS-1) transmits recommendation to the Director, Office of Science, SC-1.

Step 8. Office of Science Action on HS-1 Recommendation.

Director, Office of Science, SC-1, forwards request to the Under Secretary for Science.

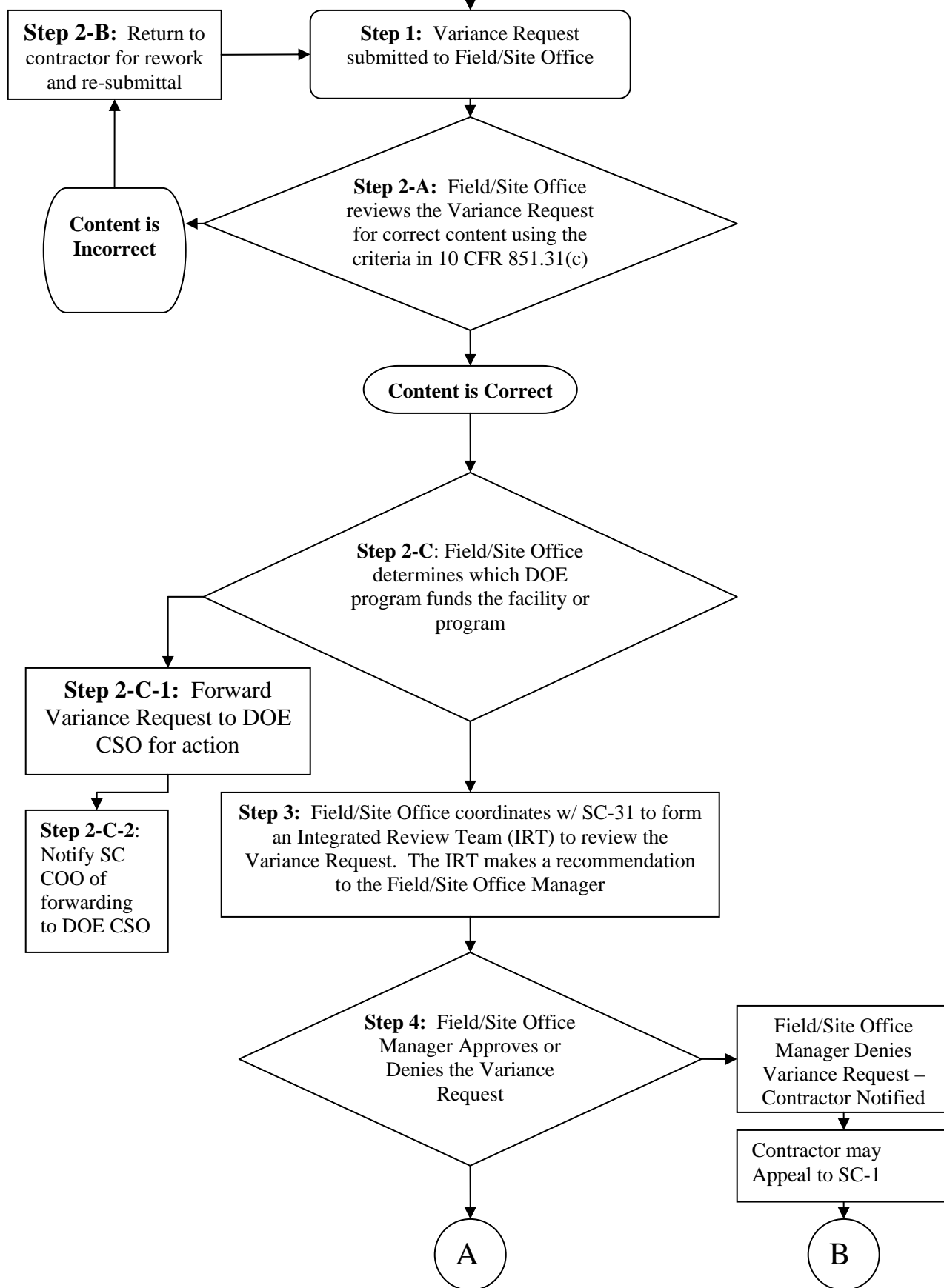
Attachment B

Step 9. Action by the Under Secretary for Science

The Under Secretary for Science considers the recommendation forwarded by HS-1 or the appeal of the recommendation for denial of the variance request forwarded by the Director, Office of Science, and makes a final decision. If the Under Secretary for Science approves the appeal of the recommendation for denial of the variance request, the approval must include reference to the safety and health standard or portion thereof that is the subject of the variance request; a detailed description of the variance request; the basis for approval; and any terms or conditions associated with the approval. If the Under Secretary for Science approves a variance request recommended for approval by HS-1, there is no further documentation necessary. After approval, the variance request and its associated documentation are then sent to the Contractor and to the Office of Price-Anderson Enforcement.

Attachment B

Variance Request Review Process



B - 6

Attachment B

